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OFFICE OF PETITIONS

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In re Application of :
Lu, et al. : DECISION ON APPLICATION
Application No.: 10/728,195 : FOR ADJUSTMENT
Filed: December 3, 2003 : PATENT TERM ADJUSTMENT
Attorney Docket No. 07917-0269001/UMMC 03-24 :

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)" filed December 17, 2010. Applicant requests that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be reconsidered.

The request for review of determination of the patent term adjustment is **GRANTED**.

The Office has updated the PALM and PAIR screens to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **zero(0) days** with five hundred and seventy days of applicant delay rather than the presently accorded six hundred and thirty-five days. A copy of the updated PALM screen, showing the corrected determination, is enclosed.

On October 1, 2010, a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) was mailed indicating that the patent term adjustment to date was 0 days. On December 13, 2010, applicant submitted the instant petition. Applicant asserts the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed October 1, 2010, is incorrect in that the applicant delay is five hundred and seventy days, rather than six hundred and thirty-five days. In summary, applicants assert the following:

- a reduction to the patent term adjustment of 10 days should be entered pursuant to 37 CFR 1.704(c)(8) for the filing of a supplemental amendment on October 6, 2005, ten days after a response under 37 CFR 1.704(b) was filed on September 26, 2005.
- a reduction to the patent term adjustment of 140 days should be entered pursuant to 37 CFR 1.704(c)(8) for the filing of a supplemental Information Disclosure Statement

on April 27, 2007, 140 days after a response under 37 CFR 1.704(b) was filed on December 8, 2006.

- a reduction to the patent term adjustment of 92 days should be entered pursuant to 37 CFR 1.704(b) for the filing of Notice of Appeal on January 9, 2008, three months and 92 days after a final rejection was mailed on July 9, 2007.
- the period of reduction of 307 days for the filing of a Request for Continued Examination on August 11, 2008, should be removed.

Applicants' arguments have been considered and are persuasive. It is appropriate to enter periods of reduction of 10 days and 140 days under 37 CFR 1.704(c)(8) for the filing of a supplemental paper on October 6, 2005, and a supplemental Information Disclosure Statement on April 27, 2007, respectively. Further, it is appropriate to enter a period of reduction of 92 days under 37 CFR 1.704(b) for the filing of a Notice of Appeal on January 9, 2008, in excess of three months from mailing date of a final Office action. Lastly, it is appropriate to remove the 307-day reduction to the patent term adjustment for the Request for Continued Prosecution filed August 11, 2008. It is noted that the Notice of Appeal filed January 9, 2008, was entered incorrectly in Office computer systems as having been filed January 9, 2007. This error triggered the 307 days reduction in that a final Office action was mailed July 9, 2007, giving the appearance that a response to this final Office action under 37 CFR 1.704(b) was not filed until August 11, 2008, in the form of a Request for Continued Examination. It is noted that the response to the final Office action under 37 CFR 1.704(b) was filed January 9, 2008, as a Notice of Appeal. Accordingly, the Request for Continued Examination filed August 11, 2008, after the filing of the Notice of Appeal on January 9, 2008, should not have triggered a reduction to the patent term of 307 days. The reduction of 307 days is being removed.

In view thereof, the determination of the patent term adjustment at the time of the mailing of the notice of allowance is **zero days** (231 days of Office delay - 570 days of Applicant delay).

The Office is in receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) which is a requirement for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the

issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

Telephone inquiries regarding this specific matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen



Patent Term Adjustments



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number*: 10728195

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[Explanation of PTA Calculation](#)

[Explanation of PTE Calculation](#)

PTA Calculations for Application: 10728195

Application Filing Date	12/03/2003	Overlapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays	231
A Delays	231	PTO Manual Adjustment	65
B Delays	0	Applicant Delay (APPL)	635
C Delays	0	Total PTA (days)	0

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
113	01/26/2011		P028	Adjustment of PTA Calculation by PTO	65		0
103	10/01/2010		MN/-	Mail Notice of Allowance			0
102	09/27/2010		IREV	Issue Revision Completed			0
101	09/27/2010		DVER	Document Verification			0
100	09/27/2010		N/-	Notice of Allowance Data Verification Completed			0
99	09/27/2010		DOCK	Case Docketed to Examiner in GAU			0
98	09/23/2010		CNTA	Notice of Allowability			0
93	07/29/2010		FWDX	Date Forwarded to Examiner			0
90	07/29/2010		ABN9	Disposal for a RCE / CPA / R129			0
92	07/23/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
91	07/23/2010	01/26/2010	RCEX	Request for Continued Examination (RCE)			84
89	07/23/2010		XT/G	Request for Extension of Time - Granted			0
88	07/23/2010		BRCE	Workflow - Request for RCE - Begin			0
95	03/04/2010		IDSC	Information Disclosure Statement considered			0
94	03/04/2010		IDSC	Information Disclosure Statement considered			0
87	03/04/2010		M844	Information Disclosure Statement (IDS) Filed			0
86	03/04/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
85	03/04/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
84	01/26/2010	11/27/2009	N/AP	Notice of Appeal Filed		60	80
83	01/26/2010		XT/G	Request for Extension of Time - Granted			0
82	08/28/2009		ELC_RVW	Electronic Review			0
81	08/27/2009		EML_NTF	Email Notification			0
80	08/27/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0
79	08/17/2009		CTFR	Final Rejection			0
78	06/05/2009		FWDX	Date Forwarded to Examiner			0
77	04/30/2009	01/31/2009	A...	Response after Non-Final Action		89	73
76	04/30/2009		XT/G	Request for Extension of Time - Granted			0
75	10/31/2008		ELC_RVW	Electronic Review			0
74	10/31/2008		EML_NTF	Email Notification			0
73	10/31/2008		MCTNF	Mail Non-Final Rejection			0
72	10/14/2008		CTNF	Non-Final Rejection			0
70	09/08/2008		FWDX	Date Forwarded to Examiner			0
68	09/08/2008		FWDX	Date Forwarded to Examiner			0
66	09/08/2008		ABN9	Disposal for a RCE / CPA / R129			0
71	08/11/2008		IDSC	Information Disclosure Statement considered			0
69	08/11/2008		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
67	08/11/2008	10/09/2007	RCEX	Request for Continued Examination (RCE)		307	56
65	08/11/2008		XT/G	Request for Extension of Time - Granted			0
64	08/11/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
63	08/11/2008		M844	Information Disclosure Statement (IDS) Filed			0
62	08/11/2008		M844	Information Disclosure Statement (IDS) Filed			0
61	08/11/2008		BRCE	Workflow - Request for RCE - Begin			0
56	07/09/2007	04/08/2007	MCTFR	Mail Final Rejection (PTOL - 326)	92		51
55	07/05/2007		CTFR	Final Rejection			0
52	04/30/2007		FWDX	Date Forwarded to Examiner			0
54	04/27/2007		IDSC	Information Disclosure Statement considered			0
53.7	04/27/2007		M844	Information Disclosure Statement (IDS) Filed			0
53	04/27/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
58	01/09/2007		N/AP	Notice of Appeal Filed			0
57	01/09/2007		XT/G	Request for Extension of Time - Granted			0
51	12/08/2006	11/08/2006	A...	Response after Non-Final Action		30	47
50	12/08/2006		XT/G	Request for Extension of Time - Granted			0
47	08/08/2006		MCTNF	Mail Non-Final Rejection			0
46	08/07/2006		CTNF	Non-Final Rejection			0
60	07/11/2006		IDSC	Information Disclosure Statement considered			0

59	07/11/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
44	07/11/2006	IDSC	Information Disclosure Statement considered	0
43	07/11/2006	IDSC	Information Disclosure Statement considered	0
42.7	07/11/2006	05/19/2006 M844	Information Disclosure Statement (IDS) Filed	<u>53</u> 39
42	07/11/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
41.7	07/11/2006	M844	Information Disclosure Statement (IDS) Filed	0
41	07/11/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
40	05/25/2006	FWDX	Date Forwarded to Examiner	0
39	05/19/2006	02/16/2006 A...	Response after Non-Final Action	<u>92</u> 37
38	05/19/2006	XT/G	Request for Extension of Time - Granted	0
37	11/16/2005	MCTNF	Mail Non-Final Rejection	0
36	11/14/2005	CTNF	Non-Final Rejection	0
35	09/30/2005	FWDX	Date Forwarded to Examiner	0
34	09/26/2005	09/22/2005 ELC.	Response to Election / Restriction Filed	<u>4</u> 32
33	09/26/2005	XT/G	Request for Extension of Time - Granted	0
32	06/22/2005	02/03/2005 MCTRS	Mail Restriction Requirement	<u>139</u> -1
31	06/19/2005	CTRS	Requirement for Restriction / Election	0
30	06/03/2005	DOCK	Case Docketed to Examiner in GAU	0
45	03/02/2005	IDSC	Information Disclosure Statement considered	0
29	03/02/2005	RCAP	Reference capture on IDS	0
28.7	03/02/2005	M844	Information Disclosure Statement (IDS) Filed	0
28	03/02/2005	WIDS	Information Disclosure Statement (IDS) Filed	0
27	07/29/2004	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
24	07/29/2004	DOCK	Case Docketed to Examiner in GAU	0
23	06/24/2004	WROIPE	Application Return from OIPE	0
22	06/24/2004	ROIPE	Application Return TO OIPE	0
21	06/24/2004	WROIPE	Application Return from OIPE	0
20	06/24/2004	COMP	Application Is Now Complete	0
19	06/24/2004	ROIPE	Application Return TO OIPE	0
17	06/24/2004	COMP	Application Is Now Complete	0
18	06/23/2004	WROIPE	Application Return from OIPE	0
16	06/23/2004	ROIPE	Application Return TO OIPE	0
15	06/23/2004	OIPE	Application Dispatched from OIPE	0
14	06/23/2004	COMP	Application Is Now Complete	0
8	06/14/2004	CRFE	CRF Is Good Technically / Entered into Database	0
26	06/04/2004	A.PE	Preliminary Amendment	0
25	06/04/2004	LET.	Miscellaneous Incoming Letter	0
13	06/01/2004	FLFEE	Payment of additional filing fee/Preexam	0
11	06/01/2004	SEQLIST	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in	0
10	06/01/2004	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
9	06/01/2004	CORRDRW	Applicant has submitted new drawings to correct Corrected Papers problems	0
7	04/07/2004	A.PE	Preliminary Amendment	0
6	04/07/2004	WAMD	Workflow incoming amendment IFW	0
5	03/31/2004	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
4	02/11/2004	L194	Cleared by OIPE CSR	0
3	02/11/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	01/06/2004	SCAN	IFW Scan & PACR Auto Security Review	0
1	12/03/2003	IEXX	Initial Exam Team nn	0

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